

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



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Commission Action:

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STAFF REPORT: APPEAL **SUBSTANTIAL ISSUE**

LOCAL GOVERNMENT: City of Laguna Beach

LOCAL DECISION: Approval with Conditions

APPEAL NUMBER: A-5-LGB-02-265

APPLICANT: Daniel Haspert

AGENT: Ted Wells

PROJECT LOCATION: 31501 Bluff Drive, Laguna Beach, Orange County

PROJECT DESCRIPTION: New 5,806 square foot, single family dwelling with an attached three-car garage in the R-1 zone on the oceanfront including new structure, elevated decks, terraces, chimneys, grading.

APPELLANT: Commissioners Wan and Dettloff

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission, after public hearing, determine that **substantial issues exist** with respect to the grounds on which the appeal has been filed for the following reason: the locally approved development does not conform to the City of Laguna Beach certified Local Coastal Program (LCP) public access policies and side yard setback standards. Further, the locally approved development does not conform to the public access policies of the Coastal Act. The staff recommendation is based on the fact that the development approved by the local government would allow the footprint of the single family residence immediately adjacent to a public access easement, as depicted on the plans. The easement has been operated by the County of Orange since 1926. In addition, the development approved by the City would allow the roof of the approved residence to extend into the public easement and as well as allow private landscaping within the public access easement itself.

The City's approval of the project was based, at least in part, on a purported earlier lot merger. That merger, characterized and treated as a lot line adjustment at the local level, purported to incorporate the County public access easement into the applicant's lot. According to a City Memorandum dated July 11, 2002, the City approved lot line adjustment No. LL 00-05 on June 21, 2000, affecting the subject lot. No coastal development permit was processed in conjunction with the lot line adjustment.

The motion to carry out the staff recommendation is on page 5.

Staff further recommends that the Commission **continue the de novo hearing** to a future Commission meeting in order to allow additional action by the City or revised project plans to be submitted by the applicant, and reviewed by Commission staff. The required additional submittal material includes **either**: 1) an approved coastal development permit for the lot line adjustment previously approved by the City without benefit of a coastal development permit; **OR** 2) plans reflecting revisions to the project, including depiction of the lot area excluding the adjacent public beach access easement area, and indicating that the project conforms to the City's certified Local Coastal Program and the public access policies of the Coastal Act. The additional information will allow the Commission to review the project based on an accurate depiction of the underlying lot configuration. This information is necessary for Commission staff to properly analyze the project and make a recommendation for the de novo stage of the hearing.

STAFF NOTE: Ownership of the parcel of land that includes the public access easement has not been definitively determined. Staff of the Orange County Public Facilities & Resources Department/Harbors, Beaches and Parks (County), the undisputed holder of the easement, is in the process of researching the issue and contends the County holds fee title to the parcel. The County asserts that the parcel was never abandoned by the County. County Counsel is evaluating a "quiet title action." Commission and County staff are researching the encroachment issues at the site. Because the question of ownership has not been definitively resolved, the term "easement" is used throughout the staff report. Depending on the outcome of the ownership research, the applicant may not have the authority to develop on the easement without approval of the landowner.

SUBSTANTIVE FILE DOCUMENTS:

1. Local Coastal Development Permit No. 02-23
2. City of Laguna Beach Agenda Bill, 6/20/00, Lot Line Adjustment 00-05
3. City of Laguna Beach Certified Local Coastal Program.

I. APPELLANTS' CONTENTIONS

Local Coastal Development Permit No.02-23, approved by the Laguna Beach Design Review Board on July 11, 2002, has been appealed by Commissioners Wan and Dettloff on the grounds that the approved project does not conform to the requirements of the certified LCP nor with the public access policies of the Coastal Act (see exhibit C). The appellants contend that the proposed development does not conform to the requirements of the certified LCP and Coastal Act public access policies with regard to the following issues:

A. Public Access

The appellants contend that the project approved by the City is inconsistent with the City's certified Land Use Plan Open Space/Conservation Element policies 3-A, 3-L, and 3-M. These policies require that public access to the coast be protected and enhanced. There is a public beach access stairway immediately upcoast of the subject site. The public access stairway is located within a public access easement which has been open and operated by the County of Orange since 1926. The appellants contend that the project approved by the local government is

inconsistent with the above-cited public access policies of the certified LCP because the approved development will occur within and immediately adjacent to the public beach access easement. Development approved by the City within the easement includes private landscaping and roof overhangs, as depicted on the approved plans. Development immediately adjacent to the public access easement, as drawn, includes the four level residence, which extends to the edge of the easement with zero setback from the edge of the easement. The appellants contend that development within the easement and immediately adjacent to it will adversely impact public use of the easement and therefore adversely impact public access.

For the same reasons identified above, the appellants contend that the project approved by the City is inconsistent with Section 30210 of the Coastal Act which requires that public access be maximized.

B. Side Yard Setback

The appellants contend that the project approved by the City is inconsistent with the City's certified LCP Implementation Plan (IP) Sections 25.10.008(E)(3)(a), 25.10.008(E)(3)(a)(3), and 25.50.004(F)(1) which provide the standards for required side yard setbacks. The appellants contend that the side yard set back should be taken from the edge of the easement adjacent to the residential lot, not the edge of the easement on the upcoast side of the easement, which would effectively incorporate the easement into the project site. Because the project as approved by the City would allow development within and immediately adjacent to the public access easement, it does not conform with the side yard setback requirements of the certified LCP IP.

II. LOCAL GOVERNMENT ACTION

On July 11, 2002, the City of Laguna Beach Design Review Board held a public hearing for the proposed project. At the conclusion of the public hearing, the Design Review Board found that the proposed project is consistent with the goals and policies of the City of Laguna Beach certified LCP and approved Local Coastal Development Permit No. 02-23 for construction of a new single family residence (Resolution No. CDP 02-036).

The local appeal period for the project ended on July 25, 2002. No appeals of the Design Review Board approval were filed. On July 29, 2002 the Commission's South Coast District Office received the Notice of Final Action from the City on the project. The ten working day appeal period was established and ran through August 12, 2002. On August 12, 2002 the subject appeal was filed in the Commission's South Coast District Office.

III. APPEAL PROCEDURES

After certification of Local Coastal Programs, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea or within 300 feet of the top of the seaward face of a coastal bluff. Furthermore, developments approved by counties may be appealed if they are not designated "principal permitted use" under the certified LCP. Finally, any local government action on a proposed

development that would constitute a major public work or a major energy facility may be appealed, whether approved or denied by the city or county. [Coastal Act Section 30603(a)].

The City of Laguna Beach Local Coastal Program was certified with suggested modifications, except for the four areas of deferred certification, in July 1992. In February 1993 the Commission concurred with the Executive Director's determination that the suggested modifications had been properly accepted and the City assumed permit issuing authority at that time. Section 30603(a)(2) of the Coastal Act identifies the proposed project site as being in an appealable area by its location between the sea and the first public road (Coast Highway) and because it is within 300 feet of the top of the seaward face of a coastal bluff.

Section 30603 of the Coastal Act states, in part:

- (a) After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:
 - (1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.
 - (2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.

The grounds for appeal of a local government action approving a Coastal Development Permit for development in the appealable area are stated in Section 30603(b)(1), which states:

- (b)(1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division.

The action currently before the Commission is to find whether there is a "substantial issue" or "no substantial issue" raised by the appeal of the local approval of the proposed project. Section 30625(b)(2) of the Coastal Act requires the Commission to hold a de novo hearing on the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal.

If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered moot, and the Commission will proceed to the de novo public hearing on the merits of the project. The de novo hearing will be scheduled at the same hearing or a subsequent Commission hearing. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea, findings must be made that any approved project is consistent with the public access and recreation policies of the Coastal Act. Sections 13110-13120 of the California Code of Regulations further explain the appeal hearing process.

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing.

The Commission will then vote on the substantial issue matter. It takes the vote of a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project.

IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that **substantial issue exists** with respect to the conformity of the project with the City of Laguna Beach certified Local Coastal Program and with the public access policies of the Coastal Act, pursuant to Public Resources Code Section 30625(b)(2).

MOTION: Staff recommends a **NO** vote on the following motion:

I move that the Commission determine that Appeal No. A-5-LGB-02-265 raises **NO SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed.

A majority of the Commissioners present is required to pass the motion.

V. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description

The project approved by the City allows removal of the cluster of existing cottages and construction of a new 4,589 square foot single family residence. The residence will have three levels of living area (totaling 4,589 square feet) and at the fourth level a 741 square foot, three car garage at the street/highest level. The project also includes 763 square feet of balconies and terraces and 12,479 square feet of landscaping. The subject site is an ocean front, bluff top lot. Both the existing development and the development as approved by the City, cascade down the slope of the lot. The lot slopes from an elevation of 106 feet above sea level at the street to 13 feet above sea level at the seaward property line. Sidewalk and curb improvements were also approved. It should be noted that the City's public hearing notice and Notice of Final Action for the project indicate that the single family residence is 5,806 square feet. That was the size of the residence as originally proposed by the applicant. As approved by the City, the residence would be 4,589 square feet.

The subject site is an oceanfront, bluff top property located between the sea and the first public road (Coast Highway) paralleling the sea. The subject site includes three separate parcels:

the residential lot, an irregular parcel adjacent to Bluff Drive, and a narrow strip immediately upcoast of the residential lot. A public beach access stairway is located on the strip of land immediately upcoast of the residential parcel. The public beach access stairway extends from Coast Highway and Bluff Drive to the wide sandy public beach below. The public beach access stairway has been operated by the County of Orange pursuant to an easement and used by the public since 1926. Existing development within the County's easement includes a private fence and portions of the existing residential development.

B. Previous City Action at the Site

The City's approval of the project was based, at least in part, on a purported lot merger. That merger, characterized and treated as a lot line adjustment at the local level, was approved by the City, and purported to incorporate the area of land covered by the County public access easement into the applicant's lot. According to a City Memorandum dated July 11, 2002, the City approved lot line adjustment No. LL 00-05 on June 21, 2000, affecting the subject lot.

All development within the City's coastal zone (unless specifically exempted under Sections 25.07.008 and 25.07.010, which do not apply here) requires approval of a coastal development permit pursuant to Section 25.07.004 of the City's certified Implementation Plan portion of the certified Local Coastal Program (LCP). Section 25.07.006(D) of the LCP defines development to include "*a change in the density or intensity of use of land including, but not limited to, the subdivision of land pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code) and any other division of land, including lot splits*". Thus, both lot mergers and lot line adjustments constitute "development," see La Fe (1999), 73 Cal. App. 4th 231, and either one would therefore have required approval of a coastal development permit pursuant to Section 25.07.004 of the City's certified Implementation Plan portion of the certified LCP. Additionally, a permit at the subject site for a lot merger and/or lot line adjustment would have been appealable to the Coastal Commission based on its location seaward of the first public road (Coast Highway) paralleling the sea, pursuant to Section 30603(a) of the Coastal Act.

There is no evidence that the lot line adjustment approved by the City also received approval of a coastal development permit, either from the City or from the Coastal Commission. Therefore the lot line adjustment, LL 00-05, is not valid. The underlying lot line adjustment is not valid because it did not receive approval of a coastal development permit. On June 5, 2002, upon discovering that the City had in the past approved a lot line adjustment without processing a coastal development permit, Commission staff sent a letter to City staff advising the City that the lot line adjustment was not valid without an approved coastal development permit (see exhibit D). Thus, the proposed development must be analyzed based on the lot line configuration that existed prior to the purported lot line adjustment (and which legally continues to exist now). Because the lot line adjustment processed by the City for the subject site is not valid, the substantial issue analysis that follows in this staff report recognizes the project site as it existed prior to the purported lot line adjustment.

The City's approval of the lot line adjustment affected the project design in that the City allowed the northwest (upcoast) side yard setback to be taken from the outermost edge of the public access easement, thereby allowing the easement itself to be used as the side yard setback area. Consequently, private landscaping and roof overhangs were approved by the City within the public access easement, as depicted in the approved project plans. In addition,

development, including the four level residence, will immediately abut the public access easement as depicted in the approved project plans.

For the County's position on the easement area, see exhibit E.

C. Substantial Issue Analysis

As stated in Section III of this report, the grounds for appeal of a coastal development permit issued by the local government after certification of its Local Coastal Program are specific. In this case, the local coastal development permit may be appealed to the Commission on the grounds that it does not conform to the certified LCP or the public access policies of the Coastal Act. The Commission must then decide whether a substantial issue exists with respect to the grounds on which an appeal has been filed in order to decide whether to hear the appeal de novo.

In this case, the appellants contend that the City's approval of the proposed project does not conform to either the requirements of the certified LCP or the public access policies of the Coastal Act (See Section I). Staff is recommending that the Commission find that the locally approved project does not conform to the certified LCP or to the public access policies of the Coastal Act and to therefore find that a **substantial issue exists** with respect to the grounds on which the appeal has been filed.

1. Public Access

The City of Laguna Beach certified Local Coastal Program (LCP) contains the following policies regarding public access to the coast:

- 3-A *Retain and improve existing public beach accessways in the City, and protect and enhance the public rights to use the dry sand beaches of the City.*
- 3-L *Provide access in South Laguna as shown on Figure 5*, consistent with Coastal Act policies and other legal requirements.*
- 3-M *The provision, maintenance and enhancement of public non-vehicular access to the accessway shall be of primary importance when evaluating future improvements, both public and private.*

* The accessway adjacent to the project site is recognized as a public beach accessway on the above referenced Figure 5 of the Open Space/Conservation section of the certified LCP.

Section 30603(b)(1) of the Coastal Act states:

The grounds for appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

In addition, Coastal Act Section 30210, which is expressly incorporated into the Technical Appendix of the LCP, states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

The subject site is an oceanfront, bluff top property located between the sea and the first public road paralleling the sea (Coast Highway). A public beach access stairway is located immediately upcoast of the residential parcel. The public beach access stairway extends from Coast Highway and Bluff Drive to the wide sandy public beach below. The public beach access stairway has been operated by the County of Orange pursuant to an easement and used by the public since 1926. Existing development at the site includes a fence and portions of the existing residence within the County's easement.

Local coastal development permit 02-23 includes approval of a new single family residence and landscaping. Although not identified in the City's public hearing notice or the notice of Final Action, portions of the approved development would occur within the public access easement held by the County of Orange. Development approved by the City within the easement includes roof overhangs and private landscaping.

A fence currently exists within the public access easement. The fence appears to be decades old. The existing fence runs almost the entire length of the easement. The entire fence encroaches into the County's public access easement. The amount of encroachment varies from approximately 4' (at the Coast Highway end) to approximately 7' (at the ocean end). Removal of the fence was not part of the City's approval of the project. Nevertheless the City planner assigned to the project indicated to Commission staff that the will be reconstructed in its current location. Although not described as part of the approved project, replacement of the fence seems likely given its age and deteriorated state. It is unlikely that the fence would simply be removed without being replaced as it serves as the separation between the public access stairway and the residence. In this case, the existing fence has created the boundary, though erroneously located, between public and private use. When the fence is reconstructed, which its current state dictates will be in the near future, it should be relocated out of the public access easement onto private land. In its current location it physically limits the area available to the public, thus minimizing public access. The City's approval did not include any special conditions regarding relocating the fence out of the easement at such time as the fence is proposed to be replaced or significantly altered. A special condition assuring that the existing fence encroachment will not be allowed to continue to diminish public access at the site is necessary to find the project consistent with the public access policies of the certified LCP and Coastal Act. Without such a special condition this finding cannot be made. Therefore, the appeal does raise a substantial issue with regard to public access.

Private development within a public access easement, such as that described above, is inconsistent with the public access policies of the City's certified Local Coastal Program and of the Coastal Act. The development approved by the City within the easement adversely impacts public access by physically limiting the area available to the general public within the public access way. In addition, as private residential development is allowed within the easement to be closer to the existing public access stairway, the possibility increases that the accessway may appear to be private to the general public. The appearance that the access

way may be private is further compounded by allowing private landscaping throughout the public access easement. The landscape plan approved by the City includes retention of existing landscaping in the easement area as well as substantial supplemental planting within and immediately adjacent to the easement.

There is a letter from the applicant's attorney to the County of Orange in the City's local coastal development permit record (see exhibit F). The letter objects to the County maintaining landscaping within the easement. In the letter the applicant asserts the County does not have the right to maintain landscaping on his property. This supports the issue that the private residential fence and landscaping within the public access easement could be allowed to obscure the accessway and, coupled with the residential development approved with no setback from the easement, and with portions of the roof extending into the easement, the possibility of the public access way being perceived as private by the general public is significantly increased. The private development (including the private fence and landscaping) within the public easement may diminish public use of the stairway, creating significant adverse impacts on public access. Thus the project as approved by the City will not maximize or preserve public access and so is inconsistent with the public access policies of the certified LCP and the Coastal Act. Therefore, the Commission finds that with regard to the private fence and landscaping approved by the City within the public access easement, the appeal raises a substantial issue.

Private development within an existing, improved, and open public access easement clearly does not maximize or enhance public access. Policy 3-A of the City's certified LCP requires that existing public access ways be retained and improved and that the public's right to use the dry sand beaches of the City be enhanced and protected. The private development approved by the City within the public access easement will not improve the existing public access way, nor is retention of the public access way assured based on continued encroachment into the access easement. Consequently the public's right to use the dry sand beach at the base of the accessway is not enhanced and protected. Thus the development approved by the City is inconsistent with Policy 3-A of the City's certified LCP. Therefore the Commission finds that the project as approved by the City raises a substantial issue.

The private development approved by the City within the easement is located within a developed and operating accessway that is identified on Figure 5 of the City's certified LCP. Policy 3-L requires that public access be provided as identified on Figure 5 of the LCP. The City's approval of local coastal development permit 02-23 does not assure that the public will continue to be able to use the existing accessway as required by Policy 3-L due to the extreme proximity of the private residential development to the easement and due to the private fence, landscape and roof overhang encroachments. Thus the development approved by the City is inconsistent with Policy 3-L of the City's certified LCP. Therefore the Commission finds that the appeal raises a substantial issue.

2. Side Yard Setback Provisions of the Certified LCP

The development as approved by the City would extend beyond the property lines into the County's public access easement. Because the development would extend beyond the property lines, it is not consistent with Sections 25.10.008(E)(3)(a), 25.10.008(E)(3)(a)(3), or 25.50.004(F)(1) of the City's certified Implementation Plan portion of the LCP, which establish minimum side yard set back limits. Section 25.10.008(E)(3)(a) states:

The width of each side yard shall be not less than ten percent of the average lot width, but in no case less than three feet; except that when the average lot width is forty feet or greater, no side yard shall be less than four feet.

The average lot width of the subject lot is approximately 55 feet wide. Based on this, the minimum side yard setback should be 5 and a half feet. In addition, Section 25.10.008(E)(3)(a)(3) provides for increased side yard setbacks as necessary to be consistent with the existing pattern of development. The side yard setback is especially important at the subject site due to its location adjacent to the public access walkway. Nevertheless, the City approved the project with a zero setback from the property line. Thus the project as approved by the City is inconsistent with the side yard setback requirements of the certified LCP.

Therefore, the project as approved by the City raises a substantial issue.

In conclusion, the proposed project is not consistent with the policies of the City's certified LCP or with the public access policies of the Coastal Act. Therefore, staff recommends that the Commission find that a **substantial issue exists** with the approval Local Coastal Permit 02-23 on the grounds that it does not conform to the policies of the City of Laguna Beach certified Local Coastal Program or the public access policies of the Coastal Act.

D. Information Needed For De Novo Hearing

The required additional information necessary to proceed with the de novo portion of the appeal includes **either**: 1) an approved coastal development permit for the lot line adjustment previously approved by the City at the subject site without benefit of a coastal development permit; **OR** 2) plans reflecting revisions to the project, including depiction of the lot area and development excluding the adjacent public access easement area, and indicating that the project conforms (including setback requirements) to the City's certified Local Coastal Program and the public access policies of the Coastal Act. Any coastal development permit for a lot line adjustment/lot merger will also be appealable to the Commission. The additional information will allow the Commission to review the proposed development based on an accurate depiction of the underlying lot configuration. This information is necessary for Commission staff to properly analyze the project and make a recommendation for the de novo stage of the hearing. Once this information is provided, staff can prepare a recommendation for the de novo portion of the appeal. A de novo hearing will be scheduled at a future Commission meeting.